

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOHN T. FURLOW,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Civil No. 6:18-cv-00127-RWS-JDL
	§	
JOEL BAKER, in his Individual	§	
Capacity and in his Official Capacity	§	
as Smith County Judge,	§	
DENNIS MATHEWS, in his Individual	§	
Capacity and in his Official Capacity	§	
as City of Tyler Detective,	§	
SMITH COUNTY, TEXAS,	§	
CITY OF TYLER, TEXAS,	§	
	§	
Defendants.	§	

RESPONSE TO THE COURT'S ORDER

Plaintiff, John T. Furlow, files this, his Response to the Court's Show Cause Order. Plaintiff respectfully shows the Court the following:

On May 30, 2018, The Court entered an Order, Dkt. 26, directing Plaintiff to show cause why Defendant Smith County's Motion to Dismiss should not be treated as unopposed. The motion, Dkt. 20, was filed on May 14, 2018, in response to Plaintiff's amended complaint, Dkt. 16. On that same date, Defendants City of Tyler and Dennis Matthews filed their Motion to Continue the Scheduling Conference.

After the May 14, 2018, filings but before the deadline to respond to the Motion to Dismiss, the parties agreed to a Docket Control Order setting forth numerous deadlines, including a deadline to respond to dispositive motions. The Scheduling

Conference was continued on May 18, 2018, after the city defendants' request. While it is possible that the Court could enter a different Docket Control Order, or not set a deadline for responses to dispositive motions as set forth in the Court's sample order, Plaintiff understood that the deadline would be in the future. Finding that not to be the case, Plaintiff respectfully requests that his response in opposition to the Motion to Dismiss, filed herewith, be considered by the Court.

In footnote 1, that "the Court notes that Plaintiff's counsel has previously failed to timely meet and confer" regarding the city defendants' motion to continue. Defense counsel are, undisputedly, accomplished emailers. The undersigned is a septuagenarian, semi-retired attorney without a regular office. Perhaps with such a situation in mind, Local Rule CV-7(h) does not expressly authorize emails as a means to meet and confer for motions, expressly states that emails do not satisfy the substantive component of a meet and confer for opposed motions, and suggests that telephone calls or in person meetings satisfy all meet and confer requirements. The undersigned is not aware of any missed telephone calls regarding the defendants' request for a continuance. The undersigned felt no need to address the meet and confer requirements in Plaintiff's Notice, Dkt. 24, responsive to the Court's Order, Dkt. 23, because there was no implication that the undersigned unreasonably failed to confer. However, footnote 1 of the instant Order suggests a blossoming conclusion that Plaintiff's counsel routinely fails to respond when, in fact, Plaintiff's counsel was unaware of a need for a response in the first instance and relied on the parties' agreement on a deadline for responses to dispositive motions in the second instance.

Accordingly, the undersigned respectfully makes the Court aware of these facts and, while vowing renewed diligence in checking for emails from opposing counsel, is hopeful that the substance of this response will encourage telephone calls from opposing counsel in the event that future motions and conferences are required.

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that the Court take due notice of Plaintiff's Response to Show Cause Order and, in light of the foregoing response, fully considers Plaintiff's Response to the Defendant Smith County's Motion to Dismiss.

Respectfully submitted this Friday, June 1, 2018,

/s/ Jeff Baynham, Jr.

By: _____

T.J. BAYNHAM, JR.

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ATTORNEY FOR MR. JOHN T. FURLOW

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this pleading has been delivered in accordance with the Local Rules of the United States District Court for the Eastern District of Texas, via cm/ecf filing on this Friday, June 1, 2018.

/s/ Jeff Baynham, Jr.
Jeff Baynham, Jr.